

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Mitchell David Holbach,)	
)	
Plaintiff,)	
)	ORDER ADOPTING REPORT AND
vs.)	RECOMMENDATION
)	
David W. Nelson, Judge of the District)	
Court, Northwest District, Jon Van)	
Grinsven, Ward County States Attorney,)	Case No. 4:07-cv-063
State of North Dakota)	
)	
Defendant.)	

On September 25, 2007, the petitioner, Mitchell David Holbach, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. Holbach also filed a Motion for Leave to Proceed In Forma Pauperis. See Docket No. 2. Magistrate Judge Charles S. Miller, Jr. reviewed Moore's petition and the pleadings and submitted a Report and Recommendation. On October 10, 2007, Judge Miller recommended that Holbach's application to proceed in forma pauperis be denied and that Holbach's petition for a writ of habeas corpus be dismissed without prejudice. Holbach was given ten (10) days to file an objection to the Report and Recommendation. No objection was filed.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 5) in its entirety and **DENIES** the Petitioner's motion to for leave to proceed in forma pauperis (Docket No. 2) and **DISMISSES** Holbach's Petition Under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody (Docket No. 4). The Court certifies that any appeal would be frivolous, could not be taken in good

faith, and may not be taken in forma pauperis. The Court further certifies that Moore has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 29th day of October, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court